Supreme Court, U.S.
FILED
DEC 16 2009
OFFICE OF THE CLERK

No. 09-722

In The

Supreme Court of the United States

HAROLD GREEN,

Petitioner,

v.

CLEARY WATER, SEWER AND FIRE DISTRICT,

Respondent.

On Petition For Writ Of Certiorari To The Mississippi Supreme Court

PETITION FOR WRIT OF CERTIORARI

HAROLD GREEN
Pro Se
558 Mullican Road
Florence, MS 39073
601-845-6378

QUESTIONS PRESENTED

(Q1) Did "Cleary make false statements to obtain a Certificate of Convenience and Necessity from the Public Service Commission"?

(Q2) Did the "Public Utilities Staff know "Cleary" could not and was not going to construct, operate and maintain a sewage treatment plant in this new area"?

(Q3) Did the "Public Utilities Staff" require "Cleary" to furnish mandatory documentation proving their eligibility to receive a certificate?

(Q4) Does the "Public Utilities Staff" have the statutory authority to use their discretion in determining the eligibility of "Cleary" to obtain a certificate?

(Q5) Did "Cleary" state, on oath, this "Centralized Sewage Treatment Plant" would be constructed upon approval and authorization from the "Public Service Commission"?

(Q6) Did "Cleary" and the "Public Utilities Staff" make false statements to the "Public Service Commission" for "Cleary" to obtain a certificate?

(Q7) What was the "Public Service Commission" required to comply with on becoming aware that the Public Utilities Staff had not required "Cleary" to furnish all fifteen (15) mandatory items found in "Appendix (A) Schedule (2)" to be eligible for a certificate?

(Q8) Did the "Public Service Commission", upon recommendation from the Public Utilities Staff, issue "Cleary" a certificate to "construct, operate and maintain a 'Sewer System' in the additional area"?

QUESTION PRESENTED – Continued

(Q9) Has "Cleary" constructed this "Sewer System"?

(Q10) Is the certificate issued to "Cleary" by the "Public Service Commission" specific and unambiguous in its construction and meaning?

(Q11) Why has the "Public Service Commission" failed to comply with mandatory laws governing certificate proceeding?

(Q12) What reason does "Cleary" give for applying to the "Public Service Commission" for a certificate to construct, operate and maintain a "Sewer System"?

(Q13) Are the reasons given in the above questions sufficient to warrant the action taken by the "Public Service Commission"?

(Q14) (A) How has "Cleary Water, Sewer and Fire District" been able to act with impunity throughout these proceedings? (B) Why did the "Public Service Commission" deny the petitioner the right to amend his complaint and then dismiss the complaint?

TABLE OF CONTENTS

	Page
OPINIONS BELOW	1
JURISDICTION	1
CONSTITUTIONAL PROVISION INVOLVED	1
STATEMENT OF THE CASE	2
REASONS FOR GRANTING THE WRIT	12
CONCLUSION	19

TABLE OF AUTHORITIES

CONSTITUTION

U.S. Const. amend. XIV 1

STATUTE

28 U.S.C. § 1547 1

OPINIONS BELOW

The Mississippi Supreme Court's opinion is unpublished. App.1. The Mississippi Chancery Court opinion is also unpublished. App.29.

JURISDICTION

The Mississippi Supreme Court issued its opinion on September 17, 2009. This Court has jurisdiction pursuant to 28 U.S.C. § 1547.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution provides that:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

"Cleary" knew before applying for a certificate (A) they did not have the finances nor credit rating to borrow money to "construct, operate and maintain a Sewer System" in the water and fire area of the District. (B) Therefore, "Cleary was not going to construct this new Sewage Treatment Plant so as to furnish "sewer service" to the customers. Most of the exhibits listed here can be found in our brief of Feb. 4, 2008. Some may be a direct quote without an exhibit number.

(A1) "Cleary's application": "Application of Cleary Water, Sewer and Fire District to enlarge its certificated area for sewer service to make said area 'identical' to its certificated area for water and fire protection." (Exhibits – D1-2-3) This area for sewer service "Cleary" is applying to be "identical" with is a centralized sewage treatment and disposal plant constructed in 1980 for the "Private Community of Cleary Heights." Cleary furnishes sewer service to these customers. The documentation in (Exhibits – M15-M8) also (Exhibit – Info) clearly show, one (1) year before their application for a certificate, "Cleary" could not and was not going to construct a Sewage Treatment Plant so as to furnish "sewer service" to this new area, making this documented evidence a false statement to obtain the certificate they now possess. Throughout all of these proceedings their stance has been the same, with impunity.

(A2) Item (5) of application (Exhibit – D2) states "The financial reports of 'Cleary' are on file with the Commission." We have not found these reports in the records presented.

However, we have found the financial report for the year 2000, sent to the Board of Supervisors that was subsequently published in the Rankin County News dated Jan. 18, 2001. It shows expenditures exceed revenue by $55,167.00 for the year 2000. This trend continued from 2002 thru 2006 for a total of $220,122.00. We have no report since 2006. "Cleary" also states in item (5) "the expansion of the sewer service area will not jeopardize the financial well being of 'Cleary.'" This makes two (2) false statements in item (5). (Exhibits – D2-M13-14). From these and (Exhibit – M12 – pages 2-3) we get a clear picture that the "Public Utilities Staff knew "Cleary" could not and was not going to construct a new Sewage Treatment Plant, as promised and required by law. The "Public Utilities Staff duties "as described in (Rule 3) of Practice and Procedure" stated in part, "The primary function of the M.P.U.S. is investigative and advisory in nature.'"

(A3) The "Public Utilities Staff did not require "Cleary" to comply with the following mandatory items found in "Appendix (A) – Schedule (2) of the Certificate Proceedings; Items (6-7-8-9-10-11-13-14-15) (Exhibit – Q14). "Cleary" did not comply with "Rule 2K" (Exhibit – Q2) as stated in their application (Exhibit – D2 – Item 6). "Rule 2K" stated in part Any person having a substantial interest in the subject

matter of the proceeding or whose rights and liabilities may be materially affected thereby. See (Exhibit – R7) (SS Ordinance).

(A) We the property owners would have to connect to this proposed sewage treatment plant. We hereby have a substantial interest in the subject matter.

(B) Our rights to object to "Cleary's" application for a certificate to construct, operate and maintain a sewer system in our area has been purposely denied to us not being listed as interested persons.

(C) We would be liable for material and labor cost to connect to this proposed centralized sewer system. These and other requirements are listed in "Cleary's" Sanitary Sewer Use Ordinance, (Exhibit – R7). E.P.A. estimated cost totals $17,000 (Exhibit – M8) for each household. We would be forced by this ordinance to give these items we paid for plus the land they are on to "Cleary" who would then charge a monthly fee to be determined by "Cleary". "Cleary" now owns property on our property. We cannot sell or alter our property without "Cleary's" approval. Yes, we are truly the only persons that meet all three requirements to be listed as interested persons, though we have been denied that right, as defined by (Rule 2K) (Exhibit – Q2) and (Appendix A) (Schedule 2) (Item 13) (Exhibit – Q14).

(A4) The "Public Utilities Staff" does not have discretion in this matter. Under Rules of Practice and Procedure (Rule 3) reads in part "MPUS Duties." The

primary function of the MPUS is investigative and advisory in nature. The staff of MPUS shall perform such duties as are assigned to them by the "Executive Director." The "Public Utilities Staff" duties are to examine all applications to verify that mandatory documents are included before making their recommendation of approval or disapproval to the "Public Service Commission." The "Public Utilities Staff" did not require "Cleary Water, Sewer and Fire District" to include in their application the following mandatory items (6-7-8-9-10-11-13-14-15) listed in (Exhibit – Q14).

(A5) In "Cleary's" application for a certificate (Exhibit – D2 – Item 8) states, "The Cleary Water, Sewer and Fire District is agreeable to operating a water, sewer and fire utility system to serve the residents of the entire area, upon approval and authorization from the commission." This is a false statement made by "Cleary". (Exhibits – M8-M13-M14)

(A6) The "Public Utilities Staff" made a false statement to the "Public Service Commission" by approving "Cleary's" application and recommending the commission issue Cleary a certificate (Exhibits – F1-2-3-4) without "Cleary" supplying the mandatory documents necessary to be eligible for a certificate, (Exhibit – Q14), thereby making a false statement by each party.

(A7) Incomplete Filings: "Petitioners for a certificate that fail to comply with the requirements of these rules or that do not have attached to them the

supporting data will be docketed and assigned an identifying number, but the commission may decline to consider said petitioner or dismiss it, Sua Sponte, until compliance is achieved." The "Public Service Commission" has discretion only to "decline to consider said petition or dismiss it." The rest of this rule is mandatory. The P.S.C. has not complied with any part of this section (Rule 7 – F6).

(A8) On September 18, 2000, the "Public Service Commission" issued "Cleary Water, Sewer and Fire District" a "Supplemental Certificate of Public Convenience and Necessity." This certificate reads in part, "It is, therefore, ordered that: The request of Cleary Water, Sewer and Fire District for a Supplemental Certificate of Public Convenience and Necessity to serve an additional area, is hereby granted and approved so as to authorize and permit it to construct, operate and maintain a sewer system in the additional area hereinafter described." (Exhibits – F1-2-3-4).

(A9) "Cleary Water, Sewer and Fire District" has not constructed a "Centralized Sewer System" as applied for in their petition to the "Public Service Commission." "Cleary" stated upon oath that they would furnish "Sewer Service" to the residents of this new area. "Cleary" knew one (1) year before application, this Sewer Service was not going to be available to these residents. (Exhibits – D1-2-3) (Exhibits – M8-13-14). These are more false statements made by "Cleary" to obtain a certificate.

(A10) Absolutely: "Specific: in that the "certificate" states no less than five (5) times these words, "Construct, operate and maintain a sewer system." The words "Sewer Service" is stated four (4) times. The words "Sewer System" and "Sewer Services" are synonymous. The words and meaning thereof in the construction of this "certificate" are "specific" and are "unambiguous". (Exhibits – F1-2-3-4)

(A11) The following document can be found in "Appeal Record Volume I" page 000109 and 000110. Attorneys of Record include Wm. Bruce McKinley, Esquire Attorney for the P.S.C. and James A. Bobo, Esquire Attorney for CWSFD. The record reads in part, "Be it remembered that Cleary Water, Sewer and Fire filed its application, along with the required exhibits and documentation, on June 13, 2000." This is a false statement. Both attorneys knew "Cleary" did not supply the required exhibits and documentation to be eligible for a certificate. One of ten (10) required items is (Rule 2K). "Cleary" did not list any of its water only customers as "Interested Persons" as required by that rule. As such, we would have been "served a notice of the filing upon each," and we were not served this notice. In so doing, the "Public Service Commission" has denied the water only customers our "Civil Rights" by way of preventing a hearing whereby we could file a complaint objecting to the "Public Service Commission" issuing "Cleary Water, Sewer and Fire District" a certificate to "construct operate and maintain a sewage system in this new area." All three (3) of the involved agencies knew

"Cleary" could not and was not going to construct this new treatment plant. As stated, this is only one of many false statements made by "Cleary" and accepted by the "Public Utilities Staff" and the "Public Service Commission".

To get a clear picture of the difference between the required documentation in "Certificate Proceeding" (Exhibits – Q2 and Q14) and the documentation presented by "Cleary" in its application (Exhibits – D1-2-3), compare these two (2) exhibits. We freely understand our position and responsibilities as set forth in this quote, "A rebuttable presumption exists in favor of the action of an administrative agency, and the burden of proof is on the party challenging an agencies action." We respectfully submit the following. As the challenging party we believe we have shown in this and other documents evidence that proves "Cleary Water, Sewer and Fire District," the "PUS" and the "Public Service Commission" did in fact make many false statements to obtain this certificate, as alleged in our complaint (Exhibit – M4), and that the "Public Service Commission" has failed to comply with the mandatory laws governing the issuing of a certificate. Here are two (2) of these laws.

1. "Petitioners" – Petitions to enlarge, diminish or alter the boundaries of a certificate area shall be granted upon good cause shown and shall contain or be accompanied by the data and documentation shown in "Schedule 2" of "Appendix A". We cannot find in the records proof that "Cleary" complied with

any more than six (6) of the required fifteen (15) to be eligible for a certificate. (Exhibit – Q14). On becoming aware of this short fall of nine (9) items the "Public Service Commission's" mandatory obligations is as follows.

2. "Incomplete Filings" – "Petition for certificates that fail to comply with the requirements of these rules or that do not have attached to them the required supporting data will be docketed and assigned an identifying number, but the commission may decline to consider said petition or dismiss it, Sua Sponte, until compliance is achieved." The "Public Service Commission" does have the discretion to decline to consider or dismiss (Rule – 7). The "Public Service Commission" has not complied with either law.

(A12) (a) "Cleary" stated in part "The district does not want to risk expanding its sewer service into an area that is not certificated." (Exhibit – D3 – pg. 2 – Lines 2,3). This sounds reasonable enough.

(b) Lines 7-8-9 state "Recently the District had trouble with an individual allowing 'raw sewage' to run within a District water easement outside the sewer service area." Still reasonable enough except that this was not "raw sewage" or implying waste from the human bowels, but wastewater from a kitchen sink and clothes washing machine known as grey water, unacceptable but not as dangerous.

(c) Lines 9-10 state "Because of reduced Department of Health personnel within the county, a timely response could not be obtained to force the remedy of

this unsanitary situation." Still reasonable enough, except that other agencies should have been notified of this "unsanitary situation." Although the "Mississippi State Department of Health" has statutory authority in this area, the "Department of Environmental Quality", "Environmental Protection Agency" and the "United States Government" can act to protect the health of the public. No record that a complaint was filed with any of these agencies.

(d) Lines 11-12-13 state "Cleary can afford and will commit to undertake construction of improvement which are necessary and economically feasible and consistent with good stewardship." This sentence is not reasonable enough due to the fact "Cleary" knew one (1) year before application they could not financially afford to, nor were they going to construct a new sewage treatment plant to furnish sewer service to this new area, thereby making a false statement and covering it when "economically feasible" and "consistent with good stewardship." (Exhibit – (1) Info). Cleary used the words "economically feasible" in (Exhibit – D2 – Item 9) to minimize a promised statement in (Exhibit – D2 – Item 8). Can there be any question as to the lack of integrity in these statements?

(A13) We the Petitioners respectfully submit they are not. The "Issues and Facts" in this appeal brief are focused on laws governing "Certificate Proceeding." We further respectfully submit these laws are unambiguous and are a mandatory requirement before an applicant is eligible for a

certificate. We do further respectfully submit these laws are not subject to dismissal at the discretion of the "Public Service Commission" or any other agency. These laws were made to protect the public from unscrupulous applicants who would use a certificate to force their will upon the innocent.

(A14) (a) The answer to question no. 14 can be answered by this statement made by "Cleary" which reads in part, "When contacted about the District's plans in relation to the expansion of the area certificated for wastewater services, the District Manager, Kenn Munn, explained the decentralized wastewater program to the personnel of the Public Utilities Staff." At no time did the District or its personnel mislead the Commission or the MPUS in any way. (Exhibit – M12 – pg. 2-3). A further statement by the "Public Service Commission" stated in part, "Be it remembered that Cleary Water, Sewer and Fire District filed its application, along with the required exhibits and documentation on June 13, 2000." Attorneys of record as being "James A. Bobo, Esquire" (Attorney for CWSFD). "Wm. Bruce McKinley, Esquire" (Attorney for the MPSC). (Volume 1 – pg. 000109-110) in the appeal record. All of the above agencies plus the two attorneys knew that required documentation to be eligible for a certificate had not been met by "Cleary" and that "Cleary" had no intention of "constructing, operating and maintaining" a sewer system in the additional area. Unconcerned for the rights of the people of the district, best describes the action taken by the "Public

Service Commission" in issuing "Cleary Water, Sewer and Fire District" a certificate to "construct, operate and maintain a sewer system" in this new area. Knowing absolutely (a) That CWSFD had not furnished required documents to be eligible for a certificate. (b) The PSC did in fact issue CWSFD a certificate with impunity. (c) The PSC has not complied with laws pertaining to incomplete filings (Rule 7 – F6) nor has the PSC acted to force CWSFD to comply with the order of the certificate which is to construct, operate and maintain a sewer system in this new area or revoke the certificate. The reason given for action not taken by the PSC is it's not in the best "public interest". We are the "public" and hereby state that the action not taken by the PSC is not in the best interest of the public but rather in the best interest of the "Public Service Commission" which in this case has failed miserably to support our rights under the Constitution.

REASONS FOR GRANTING THE WRIT

The petitioner respectfully submits the following.

The year 1990 was the last year the U.S. Census Bureau did a survey on the number of "Individual Onsite Wastewater Disposal Systems" in the State of Mississippi. That number was 425,239 housing units. The number of people served by these IOWDS was 910,574. Most of these homes are supplied "Potable Water" from 1367 "Public Water Suppliers", including

"Cleary, Water and Sewer Fire District." All (3) parties will be affected by the decision of this court, none more so than these home owners.

These "Public Water Suppliers" will surely follow CWSFD's lead by taking ownership of the IOWDS in their district. The home owners will not be able to sell their homes or very little else, without the "Water Supplier's" permission. Plus, the homeowner will be charged a fee, determined by permission and a fee determined by the "Water Suppliers" to use the IOWDS. The only cost to the "Water Suppliers" is for them to apply for a certificate, no matter what its stated purpose is, pass an ordinance declaring ownership of the IOWDS. Presto, they have a ready made source of income, without strings attached.

The following are only some of the adverse effects the "Trial Court's" decision has upon the lives of these Mississippians in the leading up to and including the issuing purpose of a certificate to the CWSFD and to what purpose they are using this certificate.

On August 12, 2004, we filed a formal complaint with the "Public Service Commission", which is quote "complaint to vacate order granting supplemental Certificate of Public Convenience and Necessity." In this complaint we stated false statements were made to obtain that certificate, which is specific and is unambiguous in its purpose, that being to "construct, operate and maintain a Sewer System in a specified area of Rankin County." We presented only one of these false statements in this complaint. That being,

CWSFD had not constructed this ordered sewer system 48 months after receiving this certificate. In fact, some 96 months later they still have not complied with this order. We have presented documented evidence to the PSC and the "Trial Court" proving Cleary has made many false statements to obtain the certificate they hold.

The "Public Service Commission" dismissed our complaint on April 5, 2005 without addressing the documented evidence presented. The Chancery Court likewise failed to address this evidence and did affirm the PSC dismissal of our complaint.

We respectfully submit the following:

(a) Both the "Public Service Commission" and the Trial Court base their decisions on laws pertaining to a legally obtained certificate.

(b) Our complaint was and is, that the "Cleary Water, Sewer and Fire District" illegally obtained a certificate by making false statements in its application to the PSC for a certificate.

(c) These laws are found in "Certificate Proceedings" and clearly define one from the other.

(d) The application laws require 16 items of information accompany the application to be eligible for a certificate.

(e) The CWSFD did not furnish 10 of these items in their application.

(f) One of the 10 required items was "Rule 2K". This item was listed in CWSFD's application. However, this item did not list the "homeowners" in the "Water and Fire District" as "Interested Persons." In so doing, the CWSFD and the PSC denied these "homeowners" their "Civil Rights" to participate in the "Certificate Proceedings." The other required 9 items to be eligible for a certificate are found in "Appendix A" "Schedule 2" and are thus:

> Items (6) a general description of new facilities.
>
> (7) an itemized estimate of cost to the utility of all new investment.
>
> (8) a listing of all sources of funding.
>
> (9) an estimate of the impact of the cost of facilities upon base and rates.
>
> (10) the number of assured and prospective customers in (a) the new area; and

(b) existing certificated area.

> (11) a complete set of engineering plans and specifications.
>
> (13) an exhibit listing the names and addresses of all interested persons as defined in Rule 2K of the Commissioner's Rules of Practice and Procedure together with a certificate that the filing utility has served a notice of the filing upon each.

(14) a copy of all testimonies to be relied upon at hearing.

(15) a copy of the current balance sheet and income statement.

(g) These laws are mandatory as to what course of action the PSC is to take concerning "Incomplete Filings."

(h) The PSC issued CWSFD a certificate without requiring the above 10 mandatory items.

(i) The PSC has no discretionary authority to issue a certificate without all of the required items.

(j) These laws were made to prevent the very thing that has happened from happening.

(k) In this instance, the PSC has completely failed to guard the "Public Interest."

(l) The Shepherds left the gate unattended; Wolves will surely devour the Sheep.

(1) We respectfully submit that we the petitioners have presented evidence, through documents and sworn affidavits, proof that CWSFD did indeed make many false statements to obtain a certificate and that the PSC did assist them by not requiring all necessary items to be eligible for a certificate.

(2) We respectfully submit the governing authority as to what procedure

the PSC is following in "Incomplete Filings" (Rule 7 F6) quote "Petitions for certificates that fail to comply with the requirements of these rules or that do not have attached to them the required supporting data will be docketed and assigned an identifying number, but the Commission may decline to consider said petition or dismiss it, Sua Sponte, until compliance is achieved.

(3) We respectfully submit the governing authority to issue a certificate that is found in (Rule 2 K3) and (Appendix A, Schedule 2) (Exhibits – Q2-Q14). As stated, CWSFD did not meet these requirements nor did the PSC require them to do so before issuing the certificate.

(4) We respectfully submit both the CWSFD and PSC denied our rights to be listed as interested persons, as the law requires.

(a) In doing so, we were unable to participate in the Certificate Proceeding

(b) We were denied standing, thereby

(c) The PSC dismissed our complaint

(5) We respectfully submit we do have standing, by property owners automatically being liable for any and all things concerning that property.

(6) CWSFD's stated reason for applying for a certificate was to get permission from the PSC to construct, operate and maintain a centralized sewage treatment plant in our area so as to furnish sewer service to be identical to Cleary Height's' sewer service. It's not unreasonable to state this plant plus connecting to this new system will cost these property owners money and property damage. To say we have no standing to take the action we have taken because we did not list in our complaint some incurring, lost damage, harmed or threat of injury, or harm to which we would suffer. This is arbitrary and is not consistent with the laws governing Certificate Proceeding.

(7) We respectfully submit the governing laws that the CWSFD, PSC and the Trial Court used in the actions they have taken against the homeowners of this water district are not applicable in these proceedings. Those laws are used only when an applicant has complied with all requirements necessary to be eligible for a certificate. CWSFD has not met those requirements nor has the PSC required them to do so, thereby making this contested certificate illegally obtained and those laws used in defense of their actions null and void.

(8) We the Petitioners respectfully submit from the evidence presented, the

certificate granted by the PSC to CWSFD was unlawfully obtained as stated in our complaint. In the "Public Interest" and for the substantial rights of 910,574 Mississippians who use individual onsite wastewater disposal systems, we respectfully ask this "Honorable Court" to weigh the evidence and to please disregard the lack of professionalism in its presentation.

CONCLUSION

For the foregoing reasons, the Court should grant the petition for writ of certiorari.

Respectfully submitted,

HAROLD GREEN
Pro Se
558 Mullican Road
Florence, MS 39073
601-845-6378

Supreme Court of Mississippi
Court of Appeals of the States of Mississippi
Office of the Clerk

Kathy Gillis
Post Office Box 249
Jackson, Mississippi
39205-0249
Telephone: (601) 359-3694
Facsimile: (601) 359-2407

(Street Address)
450 High Street
Jackson, Mississippi
39201-1082
e-mail:sctclerk@mssc.
state.ms.us

September 17, 2009

This is to advise you that the Mississippi Supreme Court rendered the following decision on the 17th day of September, 2009.

Supreme Court Case # 2008-CC-01618-SCT
Trial Court Case # 57,085

Harold L. Green v. Cleary Water, Sewer & Fire District

Affirmed. Appellant taxed with costs of appeal.

* NOTICE TO CHANCERY/
CIRCUIT/COUNTY COURT CLERKS *

If an original of any exhibit other than photos was sent to the Supreme Court Clerk and should now be returned to you, please advise this office in writing immediately.

IN THE SUPREME COURT OF MISSISSIPPI

No. 2008-CC-01618-SCT

HAROLD L. GREEN

v.

CLEARY WATER, SEWER & FIRE DISTRICT

DATE OF JUDGMENT:	09/03/2008
TRIAL JUDGE:	HON. DAN H. FAIRLY
COURT FROM WHICH APPEALED:	RANKIN COUNTY CHANCERY COURT
ATTORNEY FOR APPELLANT:	HAROLD L. GREEN (PRO SE)
ATTORNEY FOR APPELLEE:	JAMES A. BOBO
NATURE OF THE CASE:	CIVIL – STATE BOARDS AND AGENCIES
DISPOSITION:	AFFIRMED: – 09/17/2009
MOTION FOR REHEARING FILED:	
MANDATE ISSUED:	

BEFORE GRAVES, P.J., RANDOLPH AND PIERCE, JJ.

RANDOLPH, JUSTICE, FOR THE COURT:

¶1. This is an appeal from decisions by the Mississippi Public Service Commission ("Commission") denying a motion to amend, and then dismissing the complaint and the Rankin County Chancery Court's

order affirming the Commission. The complaint challenged the Commission's grant of a Supplemental Certificate of Public Convenience and Necessity ("Supplemental CCN") to the Cleary Water, Sewer and Fire District ("Cleary") in September 2000. This Court dealt with related matters in ***Green v. Cleary Water, Sewer & Fire District***, 910 So. 2d 1022 (Miss. 2005) ("***Green I***"), *cert. denied*, 547 U.S. 1098, 126 S. Ct. 1883, 164 L. Ed. 2d 568 (2006).

FACTS AND PROCEDURAL HISTORY

¶2. The Cleary Heights Water and Sewer District ("Cleary Heights") was created in 1980. That same year, the Commission issued Cleary Heights a Certificate of Convenience and Necessity ("CCN") to provide sewer services in a specified area in the Cleary Heights community in southwest Rankin County. In 1986, Cleary Heights combined operations with the Cleary Fire Protection District, and was renamed Cleary Water, Sewer and Fire District. Under the CCNs in effect at that time, Cleary continued to operate a sewer for the originally-specified area, but provided fire protection and potable water service to a larger area. Harold Green ("Green") resides in the larger area which was provided water service and fire protection, but was not served by Cleary's centralized sewer system. Residents of that area, including more than 700 households and other customers, use individual on-site wastewater disposal systems ("IOWDS").

¶3. In 2000, Cleary sought to increase the sewer-service area so that it would be identical to the area being provided water service and fire protection. Cleary applied to the Commission for a supplemental CCN to enlarge the sewer-service area. Prior to the approval of the supplemental CCN, Cleary adopted a new Sanitary Sewer Use Ordinance, which required all property owners to connect to "a public sanitary sewer" if access was available, or later became available, within one hundred feet of the property. Anyone installing a new IOWDS would have to have it inspected and approved by the district. Residents with existing IOWDSs would have to operate them in a sanitary manner.

¶4. Cleary asserted in its application for the supplemental CCN that it was "ready, willing and able to construct, operate and maintain a sewer system so as to render sewer service to the public for compensation in the additional area proposed to be served." In September 2000, after notice and a hearing, the Commission granted the supplemental CCN. The Commission found that (1) Cleary was authorized and permitted to "construct, operate and maintain a sewer system in the additional area," (2) all persons requesting sewer service in the new area would be served at the previously-approved rates, and (3) statutory notice requirements had been met and "[n]o protest or objection [had] been filed." The Commission also stated in its order, "Construction of the proposed sewer system shall be commenced within

six (6) months from the effective date of this Order or this Certificate *may* be cancelled." (Emphasis added.)

¶5. In June 2001, Cleary adopted a Decentralized Wastewater Use Ordinance ("Ordinance"). ***Green I,*** 910 So. 2d at 1024-25. With some exceptions, the ordinance essentially codified the rules that had existed prior to the grant of the supplemental CCN. The ordinance did not call for a new sewer system to be constructed, nor did it provide for an extension of the existing central sewer to the residences in the new area. The ordinance required IOWDS owners in the new area to have them inspected within one year, and annually thereafter. ***Id.*** at 1025. The inspection results were to be sent to Cleary to prove that the system was working properly. ***Id.*** Owners of properly-functioning IOWDSs were not otherwise affected. Owners unable to show a properly-working IOWDS would be required to install a new system. ***Id.*** Cleary was to accept ownership of the new IOWDS and maintain them for the property owner for a monthly fee to be added to the water bill. ***Id.*** Prior to adopting the ordinance, Cleary published a Notice of Public Hearing concerning the proposal. ***Id.*** After receiving no objections at the public hearing, Cleary adopted the ordinance. ***Id.***

¶6. In ***Green I,*** Green and more than one hundred other residents of the affected area challenged Cleary's authority to enact the ordinance. ***Id.*** This Court held that Cleary had such authority under its general police powers. ***Id.*** at 1031. However, the Court declined to affirm summary judgment in favor

of Cleary, finding that genuine issues of material fact existed as to whether the ordinance conflicted with Mississippi Department of Health ("MDH") regulations and whether the ordinance constituted a taking. ***Id.*** The taking issue became moot when Cleary amended the ordinance, removing the clause providing for Cleary to take ownership of the IOWDSs. The record does not reflect how the MDH issue was resolved.

¶7. In August 2004, while ***Green I*** was still in litigation,[1] Green filed a separate complaint, in which he requested that the Commission vacate its order granting the supplemental CCN. He argued that the Commission had reserved its right to cancel the supplemental CCN if sewer construction did not begin within six months, and asserted that nearly forty-eight months had passed without commencement of construction. He asserted that this failure proved that Cleary had made "false statements" in its bid to gain approval of the supplemental CCN.

¶8. In December 2004, Green moved to amend his complaint to assert that notice of the Commission's hearing had not been proper or adequate. Green argued that the only notice given was for the enlargement of the sewer-service area, without notice of

---

[1] Just before this filing, the Court of Appeals had held for Cleary, affirming its motion for summary judgment. ***Green v. Cleary Water, Sewer & Fire Dist.***, 910 So. 2d 1, 5-6 (Miss. Ct. App. 2004), *cert. granted,* 892 So. 2d 824 (Miss. 2005).

intention to set up a decentralized system. Green claimed that such a system was very rare in Mississippi, and could not have been anticipated by the notice given.

¶9. In February 2005, the Commission denied Green's motion to amend, stating that it had complied with statutory notice requirements by publishing a notice of hearing in a newspaper of general circulation published in Jackson, and a newspaper of general circulation in the county where the certificated area is located. The Commission found that Green was seeking notice beyond that required by statute. *See* Miss. Code Ann. § 77-3-47 (Rev. 2001).

¶10. On April 5, 2005, the Commission dismissed Green's original complaint without a hearing. In its dismissal order, the Commission found that Green's only basis for seeking the cancellation of the supplemental CCN was that construction of a sewer had not begun within six months. The Commission noted that the order granting the supplemental CCN, as with all of its certification orders where timing is not crucial, used permissive language ("Certificate may be cancelled"), not mandatory language. Thus, the Commission was not required to cancel the certificate, but had the option to do so, if warranted or advisable. The Commission also found that the only method for cancellation of a CCN is set forth by statute in Mississippi Code Section 77-3-21 (Rev. 2001). That statutory process requires a finding that the utility is not "rendering reasonably adequate service," which Green did not allege in his complaint. The

Commission noted also that, after Green filed his complaint, Cleary filed a "Satisfaction of Complaint," in which it offered to run a sewer line to Green's house. Green did not respond to the offer; thus the Commission found that Green's issue was not inadequacy of service. The Commission cited Rule 11D of the Mississippi Public Service Commission Public Utilities Rules of Practice and Procedure ("the Commission's rules"), which allows it to dismiss a complaint without a hearing, if "not necessary to the public interest or for the protection of substantial rights." The Commission found also that (1) Green had shown no "direct and substantial interest in the subject matter of the complaint," and (2) Cleary had not made any false statements to the Commission.

¶11. On April 21, 2005, Green appealed to the Chancery Court of Rankin County on the dismissal of his complaint, as well as the denial of his motion to amend. Later, Green filed a Motion to Compel Supplementation of the Record, alleging that the supplemental CCN was not lawfully granted because Cleary had not provided all the documents required under the Commission's rules. Up to this point in the proceedings, Green had been represented by counsel. Both Green and his attorney submitted briefs to the chancellor. At oral argument before the chancellor, Green appeared pro se. Although he has continued to

proceed pro se, he claims to represent 160 petitioners.[2]

¶12. In its order affirming the Commission, the chancery court analyzed the following issues: (1) Whether the court had jurisdiction over the Commission's decisions in 2000 and 2005, (2) whether Green had standing, (3) whether the Commission had committed reversible error in dismissing the complaint, and (4) whether the Commission may dismiss a complaint without a hearing.

¶13. The chancellor found that Green was not appealing from the 2000 grant of the supplemental CCN, but even if he was, the court would be without jurisdiction because the appeal was not brought within thirty days of the order. *See* Miss. Code Ann. § 77-3-67(1) (Rev. 2001). The court further held that it was without jurisdiction over the Commission's denial of Green's motion to amend. The court then found jurisdiction over the dismissal, as Green had perfected his appeal within thirty days of the dismissal order.

¶14. On the issue of standing, the chancellor found that Green did have an *interest* in the litigation because a decision rendered by the court could affect

---

[2] Green closes his pleadings with the phrase, "Respectfully submitted by 160 petitioners." Green obtained 160 signatures on a petition to the Rankin County Board of Supervisors asking it to intervene with the Commission to have the supplemental CCN canceled.

his interest, as a property owner, in the certificated area. The court found further that Green had alleged no loss, damage, injury, or harm; nor had he shown any potential threat of any such loss, damage, injury, or harm. The Court rejected Green's argument that he was not given proper notice of Cleary's true intentions, because the issue of the supplemental CCN was expansion of the service area, not what type of service would be provided. The chancellor affirmed the Commission's dismissal of the complaint. Finally, the chancellor held that the Commission was within its authority to dismiss the complaint without a hearing, because such a hearing was not necessary to the public interest or to protect substantial rights.

ISSUES

¶15. Green raises fourteen issues in his pro se brief to this Court. These can be reduced to four, as follows: (1) whether the 2000 supplemental CCN was improperly granted based on Cleary's and the Commission staff members' false statements, which were known by the Commission to be false; (2) whether the 2000 supplemental CCN was illegally granted because the Commission failed to follow its own rules, requiring certain documents to be filed; (3) whether the Commission was required to cancel the supplemental CCN because of Cleary's failure to construct a sewer system; and (4) whether it was error for the Commission to deny Green's motion to amend and to dismiss his complaint.

¶16. In fairness to Green, we will address the arguments made by Green's counsel in his chancery court brief. The issues raised were: (1) whether the dismissal was arbitrary, capricious, and not supported by substantial evidence; (2) whether it was error for the Commission to deny a hearing; (3) whether Green has standing; (4) whether the complaint should have triggered an "adequacy of service" proceeding under Mississippi Code Section 77-3-21 (Rev. 2001); (5) in the alternative, whether the statute is inapplicable; (6) whether administrative decisions based on legal errors are entitled to deference; (7) whether the dismissal violated Green's constitutionally-guaranteed rights; (8) whether the ordinance constituted an improper taking; (9) whether Green was adequately notified of the 2000 grant of supplemental CCN; and (10) if notice was inadequate, making the statutory appeal deadline inapplicable, whether the court had jurisdiction.

¶17. Green identifies *inter alia* the Commission's 2005 orders as issues for this Court to review. Although he is in compliance with the requirement that he identify any such issues under the "Statement of Issues" heading of his appeal brief, in his argument of these issues, he cites no authority. *See* M.R.A.P. 28(a)(3). Thus, he is in violation of Mississippi Rule of Appellate Procedure 28(a)(6). Nonetheless, his attorney's chancery-court brief complies with the above rules, and this Court may suspend the requirements of a rule. *See* M.R.A.P. 2(c); ***United Am. Ins. Co. v. Merrill,*** 978 So. 2d 613, 631 (Miss.

2007) (arguments that cited no authority, in violation of Rule 28(a)(6), were addressed "for informational purposes"); ***Vicksburg Partners v. Stephens***, 911 So. 2d 507, 512-13 (Miss. 2005), overruled on another issue by ***Covenant Health & Rehab. of Picayune, LP v. Estate of Moulds ex. rel. Braddock***, 2009 WL 2393918 (Miss. August. 6, 2009) (a pro se appellee submitted no brief; Court used "the briefs and pleadings submitted to the trial court by her trial attorneys"). Cleary cites ***Entergy Mississippi, Incorporated v. Bolden***, 854 So. 2d 1051 (Miss. 2003), which states that "'an argument unsupported by cited authority need not be considered by the Court.'" ***Id.*** at 1057 (quoting ***Dowdle Butane Gas Co. v. Moore***, 831 So. 2d 1124, 1136 (Miss. 2002)). The language "need not" allows this Court to consider such an argument. Further, in ***Bolden***, the appellant was not proceeding pro se, and there were no briefs available from an intermediate appeals court as we have here. ***Id.*** at 1051. Therefore, we suspend enforcement of Rule 28(a) and consider the issues raised, and the arguments made, by Green's attorney.

¶18. The issues discussed below are as follows:

(1) Whether this Court has jurisdiction over the decisions made by the Commission in 2000 and 2005.

(2) Whether Green has standing to maintain this action on appeal.

(3) Whether it was reversible error to deny Green's motion to amend his complaint.

(4) Whether it was reversible error to dismiss Green's complaint.

(5) Whether it was reversible error to deny Green a hearing.

(6) Whether the complaint should have triggered an "adequacy of service" proceeding.

DISCUSSION

¶19. Our standard of review is as follows:

> A court faced with the review of a decision of an administrative agency is very limited as to the scope and depth of its inquiry. Rule 5.03 of the Uniform Circuit and County Court Rules provides that the reviewing court will entertain an appeal only to determine if the order or judgment of the lower authority was: 1) supported by substantial evidence; 2) arbitrary or capricious; 3) beyond the power of the lower authority to make; or 4) violated some statutory or constitutional right of the complaining party.

Thomas v. Pub. Employees' Ret. Sys., 995 So. 2d 115, 118 (Miss. 2008) (citing ***Fulce v. Pub. Employees' Ret. Sys.***, 759 So. 2d 401, 404 (Miss. 2000)); *see also* Miss. Code Ann. § 77-3-67(4) (Rev. 2001). "A rebuttable presumption exists in favor of the action of an administrative agency, and the burden of proof is on the party challenging an agency's action." ***Hill Bros. Constr. & Eng'g Co. v. Miss. Transp. Comm'n***, 909 So. 2d 58, 64 (Miss. 2005)

(citing ***Pub. Employees' Ret. Sys. v. Marquez***, 774 So. 2d 421, 425 (Miss. 2000)).

I. Whether this Court has jurisdiction over the decisions made by the Commission in 2000 and 2005.

A. The Grant of a Supplemental CCN in 2000.

¶20. The chancellor found that Green was not appealing the grant of the supplemental CCN, but if he had been, his appeal would have been time-barred. Thirteen of the fourteen issues brought to this Court by Green deal with the Commission's 2000 grant of the supplemental CCN. His attorney argued in his chancery court brief that the court had jurisdiction to revoke the supplemental CCN. Thus, Green is attempting to appeal the supplemental CCN decision by way of appealing the Commission's orders in 2005. However, the chancellor correctly found that the court was without jurisdiction to hear such an appeal. Mississippi Code Section 77-3-67(1) (Rev. 2001) requires an appeal of an order of the Commission to be filed within thirty days of the order. ***Id.*** Green's appeal was filed more than four years after the order granting the supplemental CCN. This Court has stated, "Where an appeal is not perfected within the statutory time constraints no jurisdiction is conferred on the appellate court; and the untimely action should be dismissed." ***Bowen v. DeSoto County Bd. of Supervisors,*** 852 So. 2d 21, 23 (Miss. 2003) (citing ***Newell v. Jones County,*** 731 So. 2d 580 (1999)). *See*

also ***Dependents of Townsend v. Dyer Woodturnings, Inc.,*** 459 So. 2d 300, 302 (Miss. 1984) (dismissed for lack of jurisdiction; notice of appeal not timely submitted to a state commission).

¶21. Further, as Green was not a party to the grant of the supplemental CCN, he may not appeal from that decision. *See* Miss. Code Ann. § 77-3-67(1) (Rev. 2001) ("any party aggrieved by any final finding, order or judgment of the commission . . . shall have the right . . . of appeal to the chancery court"); *see also* ***In re Appeal of Final Decisions of Pub. Serv. Comm'n***, 604 So. 2d 218, 219-22 (Miss. 1992) (appeal by electricity customers dismissed, as they had not properly intervened to become parties to a rate-setting decision). This Court has held that "'statutes which allow a 'party' to appeal, as a rule, limit the right to those who were original parties to the action or proceeding.'" ***Id.*** at 222 (quoting ***Ridgway v. Scott***, 237 Miss. 400, 405, 114 So. 2d 844, 845 (1959)).

¶22. Green argues that the appeal deadline in Mississippi Code Section 77-3-67 is inapplicable because the notice did not give him "fair notice and an opportunity to be heard." ***Miss. Power Co. v. Goudy***, 459 So. 2d 257, 263, 271 (Miss. 1984) (the Commission's rate-approval procedure survived constitutional challenge). Green does not deny that notice was made in accordance with the statute, but claims that notice was inadequate because it did not inform him that a decentralized system would be implemented. The applicable notice statute requires the following:

> The commission shall fix the time and place of hearings and shall serve notice thereof, not less than twenty (20) days before the time set for such hearings. . . . Notice of all such hearings shall be given the persons interested therein by mailing such notice to each public utility which may be affected by any order resulting therefrom and by publication in a newspaper of general circulation published in Jackson, Mississippi, and, in a proceeding for a facility certificate or an area certificate, by publication in a newspaper of general circulation in the county or counties where the facility or area is located.

Miss. Code Ann. § 77-3-47 (Rev. 2001). It is undisputed that the Commission filed a timely notice in The Clarion-Ledger, a newspaper published in Jackson and of general circulation in the City of Jackson and in Rankin County. The remaining cases cited by Green on this issue all are clearly distinguishable.

¶23. The Commission found that Green was attempting to impose a notice requirement (the type of sewer to be utilized) beyond that required by statute. *See* Miss. Code Ann. § 77-3-47 (Rev. 2001). The statute does not require such notice. Green was notified of the planned implementation of the decentralized sewer system, not at the time of the expansion of the certificated area, but the next year when Cleary adopted the ordinance. Cleary published notice concerning the adoption of the ordinance, and then passed the ordinance after a public hearing at which

no one expressed opposition. ***Green I***, 910 So. 2d at 1025.

¶24. Green's central complaint is that Cleary pulled a "bait and switch" on him and the other petitioners, by claiming it would construct a sewer system for the area, while having no intent to do so. Cleary's manager said in a newspaper article as early as 2002 that the decentralized sewer system was "not something we did overnight. This was two or three years in the making." Cleary's manager also said that a centralized system would cost approximately $17,000 per home. The allegations against Cleary are of no event, for, even if the chancellor had granted them credence, they do not alter the fact that the appeal was untimely filed.

B. The Denial of Leave to Amend and the Dismissal of the Complaint in 2005.

¶25. Following the same analysis, the chancellor found that the chancery court was without jurisdiction to hear an appeal of the denial of Green's motion to amend. The thirty-day appeal deadline applies to any "final finding, order or judgment of the commission. . . ." Miss. Code Ann. § 77-3-67(1) (Rev. 2001). The Commission issued its "Order Denying Motion" on February 23, 2005. Green did not appeal until April 21, 2005. Thus, if the statute applies to the February order, the chancellor was correct. However, in ***Mississippi Power Company v. Mississippi Public Service Commission***, 240 Miss. 621, 128

So. 2d 351 (1961), this Court affirmed a chancery court's dismissal of an interlocutory appeal from the Commission's procedural orders. ***Id.*** at 629. This Court held that it was without jurisdiction over interlocutory appeals from the Commission. ***Id.*** at 627, 629. In doing so, the Court applied a prior version of the applicable statute, section 7716-26 of the Mississippi Code of 1942, which has not been amended in any way relevant to this issue. Therefore, Green was not required to appeal the denial of his motion to amend within thirty days of the order. If he had, as an interlocutory appeal, it would have been properly dismissed and remanded to the Commission. The thirty-day appeal deadline applies only to the final order issued April 5, 2005. Thus, the chancery court did have jurisdiction to consider the order denying Green's motion to amend. Further, the chancery court had jurisdiction to entertain an appeal of the April 5, 2005, dismissal of Green's complaint. Green appealed within the thirty-day statutory deadline of the final order dismissing his complaint. *See* Miss. Code Ann. § 77-3-67(1) (Rev. 2001).

II. Whether Green has standing to maintain this action on appeal.

¶26. Standing is a legal question; thus the decision of the Commission on this matter is not entitled to the same level of deference as cited *supra*. The applicable standard of review is as follows:

> The order shall not be vacated or set aside either in whole or in part, *except for errors of*

> *law*, unless the court finds that the order of the commission is not supported by substantial evidence, is contrary to the manifest weight of the evidence, is in excess of the statutory authority or jurisdiction of the commission, or violates constitutional rights.

Miss. Code Ann. § 77-3-67(4) (Rev. 2001) (emphasis added).

¶27. Cleary cites rule 11B(1) of the Commission's rules, which states that a complainant "must affirmatively show . . . a direct and substantial interest in the subject matter. . . ." Code Miss. R. 26-000-001 (2008). Green cites caselaw requiring the assertion of a "colorable interest . . . ***or*** . . . an adverse effect. . . ." ***City of Belmont v. Miss. State Tax Comm'n***, 860 So. 2d 289, 296 (Miss. 2003); ***State v. Quitman County***, 807 So. 2d 401, 405 (Miss. 2001) (emphasis added). Both the Commission and the chancery court held that Green was without standing. The Commission found that Green had shown no justiciable interest. The chancellor used a two-step analysis, finding that it was "clear" that Green had an *interest,* as a decision of the court "could affect an interest Green has in his property." However, the chancellor found Green to be *without standing* because he had alleged no injury or threat of an injury. While it may be true that Green cited no injury, that does not equate to a lack of standing. He claims injury from the fact that he would have expenses in connecting to a central sewer system, although there are no current plans to construct or extend the sewer into Green's

area. Green also claims injury from Cleary's plans to take ownership of IOWDSs, but that claim is moot, as the ordinance no longer includes such a clause.

¶28. Despite the lack of showing of an injury, Green could still have standing. This Court has stated, "It is well settled that 'Mississippi's standing requirements are quite liberal.'" ***Quitman County***, 807 So. 2d at 405 (quoting ***Dunn v. Miss. State Dep't of Health***, 708 So. 2d 67, 70 (Miss. 1998)). This liberality is due to the lack of "cases and controversies" language in Mississippi's Constitution as compared to Article III, Section 2 of the U.S. Constitution. ***Quitman County***, 807 So. 2d at 405. "Therefore, this Court has been 'more permissive in granting standing to parties who seek review of governmental actions.'" ***Id.*** (quoting ***Van Slyke v. Bd. of Trs. of State Insts. of Higher Learning***, 613 So. 2d 872, 875 (Miss. 1993)). In ***USPCI of Mississippi v. State ex rel. McGowan***, 688 So. 2d 783 (Miss. 1997), this Court held that "the 'standing' requirement . . . allow[s] a private citizen to challenge governmental actions contrary to law where the actions would otherwise escape challenge. . . ." ***Id.*** at 789.

¶29. The test for standing in Mississippi is as follows: "Parties may sue ***or*** intervene where they assert a colorable interest in the subject matter of the litigation *or* experience an adverse effect from the conduct of the defendant, or as otherwise authorized by law." ***City of Belmont***, 860 So. 2d at 296 (emphasis added) (citations omitted). *See also* ***City of Starkville v. 4-County Elec. Power Ass'n***, 909

So. 2d 1094, 1104 (Miss. 2005). The chancellor found correctly that Green had an interest in the litigation. As Green is a resident of the certificated area, a decision by the Commission may affect an interest he has in his property. However, in his apparent attempt to resurrect ***Green I*** claims, he pleaded no injury, loss, harm, or the threat of same. His 2004 complaint would be subject to an analysis akin to that of Mississippi Rule of Civil Procedure 12(b)(6), and therefore, was subject to dismissal under MPSC Rule 11B(3). There being no new claim offered, we cannot say there is an inconsistency with the Commission's rule, which "cannot supersede the requirements of . . . the pertinent rules of law." ***Capital Elec. Power Ass'n v. Miss. Power & Light Co.***, 240 Miss. 139, 153, 125 So. 2d 739, 744 (1961).

III. Whether it was reversible error to deny Green's motion to amend his complaint.

¶30. Green moved to amend his complaint to say that notice of the supplemental CCN was not proper or adequate because he received no notice that a decentralized system would be used. In its order denying the motion, the Commission noted that the statutory notice requirements had been met, and stated that Green was seeking to impose a notice requirement beyond that required by statute. The chancellor treated this as a moot issue, for he already had found that the court had no jurisdiction over this matter. Since jurisdiction was proper, we consider this issue.

¶31. The Commission's rules do not explicitly grant the power to deny a motion to amend, but as an administrative agency "in the exercise of judicial or quasi-judicial powers," the Commission has that authority. ***Love v. Miss. State Bd. of Veterinary Exam'rs***, 230 Miss. 222, 230, 92 So. 2d 463, 467 (1957). "Administrative agencies are, as a general rule, unrestricted by the technical or formal rules of procedure which govern trials before a court." ***Id.*** Specifically, the Mississippi Rules of Civil Procedure are not applicable at administrative proceedings. ***Miss. Real Estate Appraiser Licensing & Certification Board. v. James***, 730 So. 2d 1135, 1139 (Miss. 1999).

¶32. Green cites Rule 11B(3) of the Commission's rules, alleging that the Commission violated its own rule by not notifying Green and his attorney of Green's right to amend. The rule reads as follows:

> Procedure. Upon the filing of such a complaint, the Commission will immediately examine the same to determine whether it alleges a prima facie case and conforms to these rules. If the Commission is of the opinion that the complaint does not allege a prima facie case or does not conform to these rules, it will notify the complainant or his attorney to that effect, and opportunity may be given to amend the complaint within a specified time.

Code Miss. R. 26-000-001 (2008). The rule applies to the original complaint, for which there would have

been no reason to have notified Green or his attorney. Further, the rule uses permissive, not mandatory, language regarding the opportunity to amend. The remainder of Green's argument refers to alleged problems with the 2000 grant of a supplemental CCN for which the time to appeal has lapsed. As we find that the Commission did not commit reversible error in denying Green's motion to amend, the result, although for a different reason than articulated by the chancellor, is the same.

IV. Whether it was reversible error to dismiss Green's complaint.

¶33. The Commission dismissed Green's complaint for two reasons: (1) The statutory procedure under Mississippi Code Section 77-3-21 (Rev. 2001) is the exclusive method for canceling a CCN. It requires a finding that a utility is not providing "reasonably adequate service," a contention Green did not allege. (2) Because of the permissive language in the supplemental CCN, the Commission was not required to cancel it when sewer construction did not commence within six months. The chancellor used the same analysis in affirming the Commission.

¶34. "'Substantial evidence means more than a scintilla or suspicion.'" ***Miss. State Dep't of Health v. Baptist Mem'l Hosp.-DeSoto, Inc.***, 984 So. 2d 967, 975 n.13 (Miss. 2008) (quoting ***Miss. State Dep't of Health v. Natchez Cmty. Hosp.***, 743 So. 2d 973,

977 (Miss. 1999)). This court has defined arbitrary and capricious as follows:

> "Arbitrary" means fixed or done capriciously or at pleasure. An act is arbitrary when it is done without adequate determining principle; not done according to reason or judgment, but depending upon the will alone, – absolute in power, tyrannical, despotic, nonrational, – implying either a lack of understanding of or a disregard for the fundamental nature of things. "Capricious" means freakish, fickle, or arbitrary. An act is capricious when it is done without reason, in a whimsical manner, implying either a lack of understanding of or a disregard for the surrounding facts and settled controlling principles.

Hill Bros. Constr., 909 So. 2d at 70 (quoting ***In re Hous. Auth. of Salisbury***, 70 S.E.2d 500, 503 (N.C. 1952)).

¶35. Mississippi Code Section 77-3-21 (Rev. 2001) allows the Commission to make findings on whether a utility is providing "reasonably adequate service." ***Id.*** The Commission may order a utility to correct specified problems, and if the utility fails to do so, the Commission may revoke a CCN if it finds that revocation would be in the "best interest of the consuming public. . . ." ***Id.*** This Court has held that this statutory process is the "exclusive method" for cancellation of CCNs. ***Delta Elec. Power Ass'n. v. Miss. Power & Light Co.***, 250 Miss. 482, 506-07, 149 So. 2d 504, 511 (1963) ("The statutory expression

of one method for cancellation of certificates is justly to be construed as an exclusion of other methods").

¶36. The order granting the supplemental CCN stated, "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be canceled." (Emphasis added.) Rule 7A(4) of the Commission's rules allows the use of mandatory language requiring commencement within 180 days, leading to automatic voiding of a CCN if the deadline is not met. *See* Code Miss. R. 26-000-001. The Commission submits that it uses this mandatory provision when timing is crucial. Here, timing was not crucial, and the permissive language merely allowed the Commission to begin revocation proceedings if necessary. Green's arguments on this issue are without merit.

¶37. The rest of Green's argument against the dismissal is based on claims of the following: (1) an inadequate and improper notice of the 2000 supplemental CCN proceedings, (2) a taking of his property, and (3) false statements and concealment of facts by Cleary and the Commission and its staff. All these issues have been dealt with elsewhere in this opinion. Based on the analysis above, we find that the Commission did not commit reversible error in dismissing Green's complaint.

V. Whether it was reversible error to deny Green a hearing.

¶38. The Commission cited Commission Rule 11D, which allows for the dismissal of a complaint without a hearing if such a hearing is "not necessary to the public interest or for the protection of substantial rights." Code Miss. R. 26-000-001. The Commission justified this by stating the following: (1) Cleary had explained the delay in sewer implementation, (2) Green had no direct and substantial interest in the subject matter, (3) Green had not alleged inadequate service, and (4) the Commission was not required to revoke the supplemental CCN if sewer construction did not begin in six months. The chancellor affirmed the Commission's ruling, using the same analysis.

¶39. The Commission is authorized, by a Commission rule (11D) and by statute, to dismiss a complaint without a hearing. *See* Code Miss. R. 26-000-001; Miss. Code Ann. § 77-3-47 (Rev. 2001). *See also* ***Arnold Line Water Ass'n v. Miss. Pub. Serv. Comm'n***, 744 So. 2d 246, 250 n.2 (Miss. 1999). A hearing was "not necessary in the public interest or for the protection of substantial rights." Miss. Code Ann. § 77-3-47 (Rev. 2001). Green's rights were not infringed by the lack of a hearing. As noted elsewhere, (1) the takings issue, as alleged in ***Green I***, is now moot; and (2) the statutory notice requirements were satisfied. *See* ***Green I***, 910 So. 2d at 1030-31. The public interest would not have been served by granting Green a hearing, which would have been

futile. We find that the Commission did not commit reversible error in denying Green a hearing.

VI. Whether the complaint should have triggered an "adequacy of service" proceeding.

¶40. Neither Green's complaint, nor his aborted amendment, alleged any inadequacy of service on the part of Cleary. Mississippi Code Section 77-3-21 (Rev. 2001) is the exclusive method by which the Commission may cancel a CCN. ***Delta Elec. Power Ass'n***, 149 So. 2d at 511. The Commission may call for hearings on adequacy of service on its own motion. *See* Miss. Code Ann. § 77-3-21 (Rev. 2001). Alternatively, the Commission is obliged to hold such hearings if at least ten percent of a public utility's subscribers file a complaint alleging inadequate service. *See* Miss. Code Ann. § 77-3-11(5) (Rev. 2001).

¶41. Green argues that his complaint should have been taken as an allegation of inadequate service. Green attempts to buttress his argument by stating that (1) he was joined by 122 others in ***Green I***, and (2) he obtained 160 signatures on his petition asking the Rankin County Board of Supervisors to intervene with the Commission. *See* ***Green I***, 910 So. 2d at 1024. It is true that either of these numbers (122 or 160) represents a sufficient number of complainants. However, none of Green's arguments can make up for the fact that he did not allege any inadequacy of service in his complaint to the Commission. Further, none of the other "petitioners" actually joined in

Green's complaint to the Commission. We find that the Commission did not err by failing to institute adequacy of service proceedings against Cleary.

CONCLUSION

¶42. This Court has jurisdiction over the orders of the Commission in 2005, but not over the grant of the supplemental CCN in September 2000. Green has standing to bring this action. It was not reversible error for the Commission to (1) deny Green's motion to amend his complaint, (2) dismiss Green's complaint, (3) deny a hearing, (4) decline to institute adequacy of service proceedings. Although we employ a different analysis than the tribunals below, "'[i]t is well established in our jurisprudence that the right result reached for the wrong reason will not be disturbed on appeal.'" ***Cucos, Inc. v. McDaniel***, 938 So. 2d 238, 247 (Miss. 2006) (quoting ***Accredited Sur. & Cas. Co., Inc. v. Bolles***, 535 So. 2d 56, 60 (Miss. 1988)). Therefore, the judgments of the Mississippi Public Service Commission and of the Chancery Court of Rankin County are affirmed.

¶43. **AFFIRMED.**

WALLER, C.J., CARLSON, P.J., DICKINSON, LAMAR, KITCHENS, CHANDLER AND PIERCE, JJ., CONCUR. GRAVES, P.J., CONCURS IN RESULT ONLY.

IN THE CHANCERY COURT OF RANKIN COUNTY, MISSISSIPPI

HAROLD GREEN	**PETITIONER/ APPELLANT**
VS.	**CAUSE NO. 57,085**
CLEARY WATER, SEWER AND FIRE DISTRICT	**RESPONDENT/ APPELLEE**

OPINION AND ORDER

(Filed Sep. 3, 2008)

THIS CAUSE came on to be heard on the Appeal filed by the Petitioner/Appellant, Harold Green, from the Mississippi Public Service Commission's Order denying Mr. Green's Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience filed on August 14, 2004 and Motion to Amend Complaint filed December 6, 2004 in Docket No. 00-UA-491. Having considered the Complaint, Answer and Defenses, Motions and Orders of the Mississippi Public Service Commission, and finding that the Court has jurisdiction over the parties and subject matter therein, the Court finds the following to wit:

Background and Procedural History

This matter began on August 16, 2004 wherein the Petitioner/Appellant, Harold Green ("Green") filed a Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and

Necessity before the Public Service Commission of the State of Mississippi ("MPSC").

On May 16, 1980, the Governor of Mississippi signed legislation into law which created the Cleary Heights Water & Sewer District, which gave the District all powers granted to a water and sewer district under the laws of Mississippi whether or not such powers where enumerated in the resolution of the board of supervisors creating the Cleary Heights Sewer District.[1] Further, § 19-5-173 of the Mississippi Code of 1972, as amended, provides that the District " . . . shall have the power to make regulations to secure the general health of those residing in the district; to prevent, remove and abate nuisances; to regulate or prohibit the construction of privy-vaults and cesspools, and to regulate or suppress those already constructed; and to compel and regulate the connection of all property with sewers." Any district created pursuant to §§ 19-5-151 through 157 shall be vested with all powers necessary and requisite for the accomplishment of the purpose for which such district was created and such districts are empowered to do all acts necessary, proper or convenient in the exercise of the powers granted under such sections.[2]

On or about December 18, 1980, the MPSC granted the Cleary Water, Sewer & Fire District

---

[1] Miss. H. 880, 1980 General Session (May 16, 1980); Miss. Code Ann. §§ 19-5-151 to 257 (1972)

[2] Miss. Code Ann. § 19-5-175 (1972)

("District") a Certificate of Public Convenience and Necessity which authorizes the District to construct, acquire, extend or operate equipment or facilities for collecting, transmitting, treating or disposing of sewage, or otherwise operating an intrastate sewage disposal service in a specified area in and around the Community of Cleary Heights in Rankin County, Mississippi.[3] In 1986, the District resolved to change its name to Cleary Water & Sewer District and combined its operations with the Cleary Fire Protection District continuing joint operations under the name Cleary Water, Sewer and Fire District.[4] On or about September 18, 2000, the MPSC issued an "Order Granting Supplemental Certificate of Convenience and Necessity (CNN) to the District which also enlarged the District's certified area for sewer service to make said area identical to its certified area for water and fire protection. It is this Supplemental Certificate of which this litigation arises.

On September 13, 2001 the District adopted a "Decentralized Wastewater Use Ordinance" wherein said ordinance was designed to meet the demands of increased growth within the District and solving existing and future problems involving the discharge of untreated waste water into the surface and ground water of the District. The District provided Notice of

---

[3] Miss. Code Ann. §§ 77-3-11(3); 77-3-13(2) (1972) [formerly Section 5(c) of Chapter 372, Laws of 1956]

[4] Minutes of the Cleary Water, Sewer and Fire District (November 3, 1986)

a hearing on the Ordinance and got approvals from the Mississippi State Department of Health and Mississippi Department of Environmental Quality.

Harold Green filed a Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and Necessity on August 16, 2004. He alleged in his complaint that the Order states, "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be cancelled." Mr. Green alleged that more than forty-eight (48) months have passed since said Order was made effective and therefore the Order Granting Supplemental Certificate of CNN should be vacated. Mr. Green also alleged that the District perjured themselves in front of the MPSC because they did not begin construction of the proposed sewer system within six (6) months from the entry of the Order.

The District filed an Answer and Defenses on September 17, 2004. The First Defense stated that the complaint fails to show that the complainant has a direct and substantial interest in the subject matter of the complaint. The Second Defense stated that the Supplemental CNN was granted to the District in accordance with law and that the "Decentralized Wastewater Use Ordinance" was enacted in accordance with law. The District admitted that construction on the proposed sewer system did not begin within six months of the entry of the Order. The District explained that drafting and finalization of the Ordinance with three (3) agencies involved took

longer than expected. Further, Mr. Green on or about August 23, 2002 filed a lawsuit in the Chancery Court of Rankin County, Mississippi, Cause No. 52,401 wherein with little notice to the District, Green obtained a preliminary injunction preventing the District from enforcing the Ordinance, thus preventing them from constructing the sewer system. The District further Moved to Stay Proceedings until the Mississippi Court of Appeals and the Mississippi Supreme Court finally resolved the issues on appeal from the above-mentioned Chancery Court matter.

Green filed a Motion to Amend Complaint on December 16, 2004, wherein Green wanted to amend his complaint to require the District to provide Notice of their intentions to construct a decentralized sewer system. On February 23, 2005, the MPSC denied this Motion because proper notice had been given by law and requiring the District to publish what type of sewer system was being proposed would be imposing a notice requirement not mandated under law. Therefore, said Motion was denied, dismissed and otherwise held for naught.

On April 5, 2005 the MPSC entered an Order Dismissing Complaint. The MPSC found that the sole reason Green sought to vacate the Supplemental Order Granting a CNN was because construction of the sewer system did not begin within six months after entry of said Order. The MPSC found the District's answer adequately explained why the District did not offer sewer service within that time frame and that neither the District nor any of its

agents made any false representations to the Commission in this cause. Further the MPSC found that paragraph 5 of the Supplemental CNN reads as follows: "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be cancelled." (*emphasis added*) The "may" in the Order is permissive not mandatory. Additionally, the six month provision merely gives the MPSC the right to commence revocation proceedings if it so chooses. Finally, the MPSC found that under Commission Rule 11D, "The Commission may dismiss any Complaint without a hearing if in its opinion a hearing is not necessary to the public interest or for the protection of substantial rights." The MPSC found that the District had been operating under the Supplemental CNN since September 18, 2000 and the public interest is served by its continued operation.

Green filed a Notice of Appeal from Order Disimissing Complaint on April 21, 2005, and the case sat dormant until August 23, 2006, wherein Green filed a Motion to Compel Supplementation of the Record on Appeal alleging that mandatory information that should have been provided by the District was not.[5]

---

[5] The information allegedly left out deals with an agreement between the District and the Southwest Rankin Water Association which had purportedly transferred certificated sewer service area from Rankin to the District.

Chancellors John S. Grant, III and Thomas L. Zebert both recused from this matter. I, Chancery Court Judge Dan Fairly, elected to hear this matter and oral argument on the appeal was heard on February 25, 2008 at 9:00 a.m.

Issues

1. Does this Court have jurisdiction to review the decisions made by the MPSC in 2000?
2. Does Green have standing to maintain this action on appeal?
3. Did the MPSC commit reversible error in dismissing Green's Complaint?
   A. May the MPSC refuse to allow a requested amendment to a complaint?

Standard of Review

The standard of review to be employed when reviewing an administrative agency's ruling is to determine whether the decision: (1) was supported by substantial evidence; or (2) was arbitrary or capricious; or (3) was beyond the power of the lower authority to make; or (4) violated some statutory or constitutional right of the complaining party. *Landmark Structures, Inc. v. City Council,* 826 So.2d 746, 749 (Miss. 2002) "A rebuttable presumption exists in favor of the action of an administrative agency, and the burden of proof is on the party challenging an agency's action." *Hill Bros. Const. & Engineering Co.,*

Inc. v. Mississippi Transp. Com'n, 909 So.2d 58, 64 (Miss. 2005)

Analysis

This Court does have jurisdiction to review the decision made by the MPSC on April 5, 2005 but does not have jurisdiction to review the decision entered on February 23, 2005.

Any party aggrieved by any final finding, order or judgment of the MPSC, except those final findings, orders or judgments specified in Section 77-3-72, shall have the right of appeal to the chancery court of the judicial district in which the principal place of business of the utility is located. Miss. Code Ann. § 77-3-67(1) If an application for rehearing has been filed, an appeal must be filed within thirty (30) days after the application for rehearing has been refused or deemed refused. *Id.* If an application for rehearing has not been filed, an appeal must be filed within (30) days after the entry of the commission's order. *Id.*

In the case at hand, no application for rehearing was filed by Green. Therefore, Green had thirty (30) days in which to perfect an appeal to this Court, which was done. The District argues that this appeal improperly seeks to gain appellate review of a decision wherein the MPSC made on September 18, 2000, in Docket No. 2000-UA-491, to expand the area in which the District is the exclusive provider of sewer services. This Court disagrees. Green is seeking to review decisions rendered by the MPSC on

February 23, 2005 and April 5, 2005. The appeal was perfected on April 21, 2005 and the appeal from the Order Dismissing Complaint is properly before this Court. Therefore, the Order Denying Motion to Amend Complaint entered by the MPSC on February 23, 2005 is time barred and this Court lacks jurisdiction to hear such an appeal pursuant to Section 77-3-67 of the Mississippi Code, Annotated.

It is important to remember exactly what Green is appealing. The District argues that Green is seeking to overturn the MPSC's September 18, 2000 ruling wherein the MPSC granted the District a Supplemental CNN. Green has not appealed that decision.[6] Rather, Green has appealed the Order Dismissing his Complaint to Vacate the Order Granting a Supplemental CNN handed down on April 5, 2005; an Order decided by the MPSC without a hearing. Therefore, the appeal as to the Order Dismissing the Complaint to Vacate the Order Granting Supplemental CNN is properly before this Court on appeal.[7] In case the Order is wholly or partly vacated the court may also, in its discretion, remand the matter

---

[6] If in fact Green had appealed the September 18, 2000 Order Granting a Supplemental CNN, then that appeal would be time-barred under Section 77-3-67 of the Mississippi Code, Annotated (1972).

[7] If this Court were to reverse and remand the MPSC ruling, that reversal may not affect the September 2000 order. If this Court were to reverse and render its own opinion, then the September 2000 order may be affected. However, this issue is moot due to the discussions below.

to the commission for such further proceedings, not inconsistent with the court's order as, in the opinion of the court, justice may require. Miss. Code. Ann. § 77-3-67(4).

Green does not have standing to maintain this action on appeal.

The District asserts that Green lacks standing to bring the present action because: (1) he was not a party to the proceeding before the MPSC in 2000; and (2) he failed to show that he has a direct and substantial interest in the subject matter. Further the District argues that Green cannot prosecute criminal charges before the MPSC.

In Green's Complaint, he alleges that "false statements were made by persons representing Cleary . . . " The MPSC has no authority to convict anyone of an alleged criminal offense. *Brotherhood of R. R. Trainmen v. Illinois Cent. R. Co.*, 138 So.2d 908, 910 (Miss. 1962). Moreover, the Court agrees with the District that Green does not possess an office or status which allows him to prosecute criminal charges in front of the MPSC.

In the MPSC's Order Dismissing Green's Complaint, the MPSC states that pursuant to Rule 11B (1) of the Commission's Practice and Procedure Rules to have standing the Complainant "must affirmatively show that the Complainant has a direct and substantial interest in the subject matter of the Complaint." Nowhere in the body of Green's

Complaint does he attempt to show that he has any justiciable interest.

It is clear to this Court that Green does in fact have an interest in the litigation at issue: he lives in the certificated area to which the District has a Supplemental CNN. Certainly a judicial decision rendered by a Court *could* affect an interest Green has in his property. Regardless if Green has an interest in the subject matter of the litigation, the real inquiry is whether Green alleges some injury, loss, damage, harm or threat of injury, loss, damage or harm to which the Court can act in granting a remedy. To answer that inquiry the Court looks to Green's Complaint. Nowhere in the Complaint does Green allege an injury, loss, damage, harm or threat of injury, loss, damage or harm. The only basis for Green asking the MPSC to vacate the Supp. CNN is that the District did not begin construction within six (6) months of the effective date of the Supp. CNN.[8] While Green may have an interest in the granting the District a Supp. CNN, he did not allege any loss, damage, injury, harm or potential threat of harm, injury, loss or damage.

Green, in his Reply Brief, argues that he was not given proper notice of the true intentions of the

---

[8] The District's reasoning as to why construction did not begin within six months of being granted the Supp. CNN is wholly reasonable given the circumstances; for more detail see *supra*.

District in not only pursuing the Supp. CNN but also desiring the creation of a decentralized wastewater sewer system. The Notice published to all landowners in the District's certificated area notified landowners of the District's request to acquire a Supp. CNN. This Court agrees with Green that no mention was made in the Notice as it applies to forming a decentralized wastewater sewer system. Green argues that since the notice did not include the "Decentralized wastewater sewer system" caveat, the Notice was rendered unreasonable and therefore, one could not expect Green to be denied standing on the basis that he was not properly noticed. The Court disagrees. The issue set forth in the Notice was whether the District should be issued an expanded certificate, not what technology, processes, facilities, or equipment which the District would bring to bear in providing services. Those issues are the providence of other regulatory agencies such as the EPA, MDEQ and the MSDH. Therefore, this Court finds that proper notice was given to Green in regards to the granting of a Supp. CNN to the District.

The MPSC did not commit reversible error in dismissing Green's Complaint.

As previously mentioned, the Complaint's only basis for asking the MPSC to vacate the Supp. CNN is that the District did not begin construction within

six (6) months of the effective date of the Supp. CNN.[9] The MPSC found that the District's sworn unopposed answer adequately explained why the District did not offer sewer service within six (6) months of the date of the Supp. CNN and, that neither the District nor any of its agents made any false representations to the MPSC in this cause. Why the District failed to begin offering sewer service within the ordered time frame is due to the following:

1. Drafting and finalization of the Ordinance with three agencies involved took longer than expected;

2. The District acted in a manner to phase in the enforcement of the Ordinance so as to avoid working any perceived hardship on individual residents; and

3. On August 23, 2002, Green filed a lawsuit in Chancery Court of Rankin County, Mississippi, in Cause No. 52,401 obtaining a preliminary injunction preventing the District from enforcing the ordinance including the provisions under which the District would construct, acquire, extend or operate equipment facilities for collecting, transmitting, treating or disposing of sewage or otherwise operating an intrastate sewage disposal service.[10]

---

[9] *See,* paragraph five (5) of the Order Granting Supp. CNN

[10] There was little or no notice given to the District in regard to said preliminary injunction.

Further, Paragraph 5 of the Order Granting Supp. CNN reads as follows: "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be cancelled." (*emphasis added*) This Court agrees with the MPSC that the "may" in the Order is permissive not mandatory. The six month provision merely gives the MPSC the right to commence revocation proceedings if it so chooses. The running of the six months without construction does not automatically revoke the Supp. CNN.

Also, Miss. Code Ann. § 77-3-21 provides the sole means for revoking a CNN. A CNN can only be revoked if the MPSC finds that a utility is not "rendering reasonably adequate service." Mississippi case law has held that this is the "exclusive" method to cancel or revoke a CNN.[11] Green's Complaint did not allege that the District is not rendering reasonably adequate service, and further made no effort to prove that the District is not rendering reasonably adequate service. For these reasons, the Court finds that the MPSC did not commit reversible error in dismissing Green's Complaint.

---

[11] *Delta Elective Power Ass'n v. Mississippi Power & Light Co.*, 149 So.2d 504 (Miss. 1963)

A. The MPSC is allowed to dismiss a Complaint without a hearing.

Under Commission Rule 11(D), "The Commission may dismiss any Complaint without a hearing if in its opinion a hearing is not necessary to the public interest or for the protection of substantial rights." The MPSC found, and this Court agrees, that since the District has been operating under the Supp. CNN since September 18, 2000, the public interest is served by its continued operation. It cannot be said, from the Complaint, that a hearing is necessary in this case either for the public interest or for the protection of substantial rights. The potential harm or loss to the District if the Supp. CNN were revoked would far outweigh any potential harm or loss Green would suffer if the District continued acting under the Supp. CNN.

Conclusion

In conclusion, the Court finds that it does have jurisdiction to review the decision rendered by the MPSC on April 5, 2005, but does not have jurisdiction to review the decision entered on February 23, 2005. Green does not have standing to maintain this action, not because of his justiciable interest but because he failed to allege some injury, loss, damage, harm or threat of injury, loss, damage or harm to which he would suffer. Further, the MPSC did not commit reversible error in dismissing Green's Complaint because the MPSC is allowed by law to dismiss a Complaint without a hearing because a hearing in

this matter would have not been necessary to the public interest or for the protection of substantial rights. Therefore, the decision of the MPSC is affirmed.

IT IS, THEREFORE ORDERED AND ADJUDGED that:

1) The Order denying Green's Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and denying Motion to Amend Complaint shall be and is hereby affirmed.

2) Each party shall be responsible for his own legal fees and costs associated with this appeal.

THIS THE 3rd DAY OF Sept., 2008

/s/ Dan Fairly
CHANCERY COURT JUDGE

BEFORE THE PUBLIC SERVICE COMMISSION
OF
THE STATE OF MISSISSIPPI

CLEARY WATER, SEWER & FIRE DISTRICT	**DOCKET NO. 04-AD-544**

IN RE: COMPLAINANT TO VACATE ORDER GRANTING SUPPLEMENTAL CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

ORDER DISMISSING COMPLAINT

THIS DAY, there came on for consideration before the Mississippi Public Service Commission (Commission) the above referenced Complaint. After a review of the entire record in this matter, the Commission finds as follows:

1. The Commission has exclusive jurisdiction over this matter and the parties. Due and proper notice of this filing was given according to applicable law.

2. That on August 16, 2004, Harold Green filed a Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and Necessity (Supp. CCN).

3. The Complainant bases his Complaint entirely on the allegation that Cleary Water, Sewer & Fire District (Cleary) did not begin construction within six months of the issuance of the Supp. CCN.

The Complainant alleges further that there were false statements made by people representing Cleary, ostensibly about when construction was to commence in order to obtain the Supp. CCN and that those people were "guilty of perjury" and should be "deemed a felon."

4. That on December 18, 1980, Cleary was granted the original Certificate of Public Convenience and Necessity for sewer service in Rankin County, Mississippi in Docket No. U-3953.

5. That on June 13, 2000, Cleary filed the Application of Cleary Water, Sewer & Fire District To Enlarge Its Certificated Area For Sewer Service To Make Said Area Identical To Its Certificated Area For Water and Fire Protection.

6. In the Application, Cleary alleged that it held a Certificate of Public Convenience and Necessity to provide water service in the requested area and was also authorized to provide fire protection in that area. Cleary petitioned the Commission to grant it a Supp. CCN so that its sewer area would be identical to the area Cleary was providing water and fire protection service. Complainant did not intervene.

7. On September 18, 2000, in Docket No. 2000-UA-491, the Commission granted Cleary the Supp. CCN as requested in the Application.

8. In response to the Complaint, on September 7, 2004, Cleary filed a "Satisfaction of Complaint" under The Commission's Practice and Procedure Rule

11B(4). In this filing, Cleary offered to provide sewer service to Complainant by running a sewer Line along the public right-of-way in front of Complainant's house. Under this Rule, Complainant has ten (10) days to accept or reject the offer of satisfaction. The Commission's records indicate that Complainant failed to file a response of any kind. If Complainant's real issue was the lack of sewer service, he could have solved that issue at that time.

9. On September 17, 2004, Cleary filed an Answer and Defenses of Cleary Water, Sewer & Fire District. The first defense raised by Cleary was that Complainant had failed to affirmatively show a "direct and substantial interest in the subject matter of the Complaint. The Commission's Practice and Procedure Rule 11B(1) requires that a Complainant "must affirmatively show that the Complainant has a direct and substantial interest in the subject matter of the Complaint that will be determined by the proceeding." Nowhere in the body of the Complaint does Complainant attempt to show that he has any justiceable interest. The Commission finds that the Complaint filed herein fails to allege or prove any "direct and substantial interest" as required by the Rule.

10. Complainant is asking the Commission to revoke the Supp. CCN issued to Cleary. Under Mississippi law, there is only one method provided for cancellation of a CCN and that is set forth in Miss. Code Ann. § 77-3-21. This code section provides that a CNN may be revoked if the Commission finds that a

utility is not "rendering reasonably adequate service." If the Commission makes such a determination, it must then advise the utility what it must do in order to render reasonably adequate service. If the utility fails to do what the Commission orders then, and only then, the certificate may be revoked. Mississippi case law has held that this is the "exclusive" method to cancel or revoke a CCN.[1] Complainant does not allege that Cleary is not rendering reasonably adequate service, and further makes no effort to prove that Cleary is not rendering reasonable adequate service.

11. The Commission finds that the Complaint should be dismissed on the grounds that the Complaint does not allege and prove that Cleary is not "rendering reasonably adequate service" pursuant to Miss Code Ann., § 77-3-21, the exclusive method to cancel a CCN.

12. As previously mentioned, the Complaint's only basis for asking the Commission to vacate the Supp. CCN is that Cleary did not begin construction within six (6) months of the effective date of the Supp. CCN. The Commission finds that Cleary's sworn unopposed answer adequately explains why Cleary did not offer sewer service within six (6) months of the date of the Supp. CCN and, that neither Cleary nor any of its agents made any false representations to the Commission in this cause.

---

[1] Delta Electric Power Assn. v. Mississippi Power and Light Co. 250 Miss. 482, 149 So. 2d 504 (1963).

The paragraph (paragraph 5) of the Supp. CCN that Complainant relies on reads as follows: "Construction on the proposed sewer system shall be commenced within six (6) months from the effective date of this Order or this Certificate *may* be cancelled." (*emphasis added*) The "may" in the Order is permissive not mandatory. This is standard language put in all Commission certification orders. Commission Practice and Procedure Rule 7A(4) provides: "The Commission may in its order granting a Certificate of Public Convenience and Necessity include a provision that in the event that operations authorized under the certificate are not commenced within one hundred eighty (180) days, the certificate will be automatically voided at the end of said period." The Commission applies the mandatory provision of the Rule when the timing of implementation of utility service is crucial. When it is not, the Commission uses the permissive language in its order. Additionally, as written, the six (6) months provision merely gives the Commission the right to commence revocation proceedings if it so chooses.

The running of the six (6) months without construction does not automatically revoke the Supp. CCN. The Commission must invoke this right and institute some proceeding to accomplish revocation. The Commission has not done the above because it was and is not warranted or advisable in this instance. The granting of a CCN confers the right to be the exclusive provider of that particular utility service in that specific geographical area. The courts

have said that a CCN confers valuable property rights that are entitled to protection by the courts.[2] The Commission will not and cannot revoke such a valuable right without going through the proper § 77-3-21 process. The Commission finds that the Complaint should be dismissed on the additional grounds that the running of the six (6) months without construction does not automatically revoke the CCN but requires an affirmative action by the Commission to do so, and in this instance the Commission declines to invoke its right of revocation.

Under Commission Rule 11D, "The Commission may dismiss any Complaint without a hearing if in its opinion a hearing is not necessary to the public interest or for the protection of substantial rights". The Commission finds that since Cleary has been operating under the Supp. CCN since September 18, 2000, the public interest is served by its continued operation.

The Commission further finds that Cleary's Answer adequately explains why Cleary did not commence construction within six (6) months of the effective date of the Supp. CCN. Additionally, since the Complainant failed to allege any direct and substantial interest in the subject matter; failed to allege or prove that Cleary is not rendering reasonably adequate service; and, since the six (6)

---

[2] E.g., Capital Electric Power Assoc. v. Mississippi Power & Light Company, 218 So.2d 707 (1969).

months period to commence construction is discretionary with the Commission, it cannot be said that a hearing is necessary in this case either for the public interest or for the protection of substantial rights.

IT IS THEREFORE, ORDERED, that for the reasons set forth herein, the Complaint to Vacate Order Granting Supplemental Certificate of Public Convenience and Necessity be and is hereby dismissed.

This order is effective upon issuance.

SO ORDERED, this the 5th day of April, 2005.

MISSISSIPPI PUBLIC
SERVICE COMMISSION

/s/ Bo Robinson
Bo Robinson,
Chairman

/s/ Nielsen Cochran
Nielsen Cochran,
Vice-Chairman

/s/ Michael Callahan
Michael Callahan,
Commissioner

[SEAL]

ATTEST: A True Copy

/s/ Brian U. Ray
Executive Secretary

BEFORE THE PUBLIC SERVICE COMMISSION OF THE STATE OF MISSISSIPPI

2004-AD-544

CLEARY WATER, SEWER & FIRE DISTRICT

IN RE: APPLICATION OF CLEAR WATER, SEWER AND FIRE DISTRICT, TO ENLARGE ITS CERTIFICATED AREA FOR SEWER SERVICE TO MAKE SAID AREA IDENTICAL TO ITS CERTIFICATED AREA FOR WATER AND FIRE PROTECTION

ORDER DENYING MOTION (2-23-05)

THIS CAUSE came on this day to be heard on "Motion to Amend Complaint of Harold Green" filed December 6, 2004.

The Public Service Commission, being fully apprised in the premises and having considered the documents and records before it, does hereby deny the aforesaid motion.

Miss. Code Ann., § 77-3-45 sets forth the notice requirements in certification cases Applicant must give notice to persons interested by mailing notice to each public utility which may be affected and by publication in a newspaper of general circulation published in Jackson, Mississippi and in a newspaper

of general circulation in the county where the facility or area is located.

In the Order Granting Supplemental Certificate of Public Convenience and Necessity issued September 18, 2000, the Commission found that due and proper notice had been given as required by law. Movant in this cause is not contending that notice was not given as required by statute and regulation, but that the notice did not advise "of the intentions of Cleary to attempt to create a decentralized sewer system." In other words, Movant contends that Cleary was required to give notice of the type or kind of sewer treatment facility it was going to use. Movant seeks to impose a notice requirement on Respondent that the law does not require and for that reason the Motion should be denied.

IT IS THEREFORE ORDERED, that the Motion to Amend Complaint of Harold Green be and is hereby denied.

IT IS FURTHER ORDERED, that this Order shall be effective upon issuance. Chairman Bo Robinson voted Aye, Vice-Chairman Nielsen Cochran voted Aye; and Commissioner Michael Callahan voted Aye.

SO ORDERED on this the 23rd day of February, 2005.

MISSISSIPPI PUBLIC SERVICE COMMISSION

/s/ Bo Robinson
Bo Robinson,
Chairman

/s/ Nielsen Cochran
Nielsen Cochran,
Vice-Chairman

/s/ Michael Callahan
Michael Callahan,
Commissioner

[SEAL]

ATTEST: A True Copy

/s/ Brian U. Ray
Executive Secretary